

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
AT NASHVILLE

UNITED STATES OF AMERICA,  
ex rel.

vs.

COMMUNITY HEALTH SYSTEMS,  
INC., et al.

)  
)  
) Case No.  
) 3:11-cv-442  
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BEFORE THE HONORABLE JULIET E. GRIFFIN, MAGISTRATE JUDGE

TRANSCRIPT OF

**ELECTRONIC RECORDING**

OF PROCEEDINGS

April 7, 2015

Status Conference  
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APPEARANCES:

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1           The above-styled cause came on to be heard on  
2 April 7, 2015, before the Honorable Juliet E. Griffin,  
3 Magistrate Judge, when the following proceedings were had,  
4 to-wit:

5           THE COURT: This is the case of *United States of*  
6 *America, ex rel., James Doghramji versus Community Health*  
7 *Systems, Inc., et al.* The Case Number is 3:11-0442.  
8 Consolidated into that case are the cases of Number  
9 3:14-2160, 3:14-2195 and 3:15-0110.

10           This is an interesting situation actually. It  
11 probably has no relevance to you all at all, but the first  
12 listed first named case, which is the oldest case into which  
13 the other cases have been consolidated, is in fact listed as  
14 closed because there is a final judgment, and all we have got  
15 is the attorney's fees. So we've got a closed case, and then  
16 we've got these other cases that came in and have now been  
17 consolidated with a closed case. That's not your problem.  
18 To the extent it is anybody's problem, it is mine or  
19 administratively it is a problem. It is just an odd  
20 situation.

21           Tell me what you all want to do. Have you  
22 talked? Do you have a joint proposal? What is the  
23 status? Or any kind of proposal? Yes, sir.

24           MR. GARRISON: Your Honor, David Garrison, along  
25 with Ms. Buschner, who will come up in a second. We don't

1 have a joint proposal. We, as you know, Ms. Buschner and  
2 myself represent the relator in the case that was filed here  
3 in Nashville and have asked for status conference a couple of  
4 times, and then most recently asked for this status  
5 conference with CHS.

6 But would like to introduce Ms. Buschner, who is  
7 prepared to kind of give some background, at least explain  
8 what the relators -- and I know the other realtors' counsel  
9 will speak for themselves, but to propose how we see an  
10 efficient way of proceeding.

11 THE COURT: All right. Thank you. Ms. Buschner.

12 MS. BUSCHNER: Thank you, Your Honor. As Mr.  
13 Garrison said, amongst the relators we talked a little bit  
14 about how to deal with the order that we got from Judge  
15 Sharp. And I want to address that, but first I would like if  
16 you could indulge me, if I could give you a little background  
17 about the case that I thought might be very helpful to you in  
18 helping us try to reach some sort of schedule here that the  
19 judge has asked us to do.

20 Where we are now is, as you noted, we have at  
21 least three cases that are consolidated here. The *Doghramji*  
22 case, which is the case that Mr. Garrison and I are here  
23 today about is the case that was filed in Nashville. It was  
24 part of a settlement that was reached with the United States  
25 Government and 29 states and over a hundred separate

1 corporations affiliated with CHS. In that settlement, it  
2 resolved the claims of seven different cases, relator cases  
3 that were brought in various parts of the country, including  
4 Texas, Illinois, and here, Your Honor, in Nashville.

5           The settlement was a result of a multi-year  
6 investigation by the United States Government and the states  
7 in which the relators participated hand in hand with the  
8 government to help reach the settlement. For many years, we  
9 worked on reviewing documents that they had gotten from CHS  
10 and its affiliates.

11           They issued CIDs, or civil investigative demands.  
12 I don't know if you have heard of those before. I am sure  
13 you have. But subpoenas essentially where thousands and  
14 thousands of documents were produced. We worked hand in hand  
15 with the government to do CID depositions of high-level folks  
16 in CHS and its over a hundred affiliates. And that all  
17 resulted in a settlement of about \$98 million.

18           And in that case, in those seven cases, the United  
19 States and the states intervened on the seven cases here. At  
20 least the United States did on the seven cases here. The  
21 states intervened in a smaller subset.

22           But the Government intervened, and then, you know,  
23 CHS, the government, and the relators, all seven agreed to  
24 settle these claims. And in the settlement, the relators,  
25 all seven groups of relators gave up claims that they had

1 against CHS under the False Claims Act.

2 In some cases, I think that there are remaining  
3 claims of retaliation for some of the relators. That's not  
4 the case in the *Doghramji* case. So not all of the claims  
5 were settled, but in some respects the cases that were  
6 intervened on by the Government, those cases were settled.

7 Under the False Claims Act, as you probably are  
8 aware -- I know Mr. Garrison has told me that you worked on  
9 some of those cases -- there is a fee shifting provision not  
10 unlike the civil rights statutes which allow the litigants to  
11 recover fees and costs in a case where they are the  
12 prevailing party. And in this case, all seven of the  
13 relators were prevailing parties because CHS entered the  
14 settlement agreement by which the seven relators received  
15 relief from the government in terms of a bounty from that \$98  
16 million.

17 Also, CHS and its a hundred affiliates entered  
18 into corporate integrity agreement with the HHS, the U.S.  
19 Government, to curtail the practices that the complaints  
20 alleged that they are involved in. And the settlement  
21 outlines many of those claims. Some of the relief, the  
22 largest relief that the Government got were for claims that  
23 CHS unnecessarily admitted Medicare and Medicaid patients  
24 into their hospital for overnight stays where they were not  
25 needed.

1           As I said, all of the seven sets of cases, there  
2 is multiple layers in some of the cases. In our case, for  
3 example, there is three relators. They were able to achieve  
4 a result and change the position of the parties, not unlike  
5 other civil rights cases.

6           In the settlement agreement, the parties agreed  
7 that this issue of the relators' fees would be left open or  
8 reserved so that the relators could file fee petitions.

9           When we entered the agreement, the defendants  
10 claimed or said that they would like to reserve certain  
11 challenges to the settlement. And when we ended up -- and  
12 just so that you sort of know the procedure in the cases that  
13 around spring of 2014, the Government had a handshake deal  
14 with the defendants, and then we negotiated the settlement  
15 that we have before you. And I think that took several  
16 months, to my recollection maybe four or five months. At no  
17 time during that time did they raise the issue that which  
18 they are raising here which is that they would like to  
19 challenge the jurisdiction or the standing of the seven  
20 relators that were going to be involved in the settlement.

21           And so when, Your Honor, when you moved -- I think  
22 we gave our actual hours to them I think back in May or June  
23 of last year, 2014. There really wasn't much discussion  
24 about the fees, and so we basically learned that they weren't  
25 really willing to compromise on the fees. And so that was

1 after the settlement agreement was reached in August 4, 2014  
2 that left us with filing a fee petition, and we did so in  
3 late September of 2014.

4 Now, some of the other relators can give you --  
5 their counsel can give you more information about what's  
6 happened in their cases, but it is my understanding at least  
7 with respect to one of the Texas cases, counsel who are  
8 sitting here at this table, Ms. Soifer and Mr. O'Connell, had  
9 filed a fee petition in that case as well.

10 I think -- and like I said, I don't want to step  
11 on anyone's toes. Mr. O'Connell represents another relator,  
12 and I am not sure that a fee petition has been filed in that  
13 case, but that's where we are.

14 And so about September we realized for the first  
15 time, CHS had never raised this, that essentially they want  
16 to raise an issue that really should have been brought at the  
17 motion to dismiss phase.

18 Now the issue that we're talking about is a  
19 provision of the False Claims Act called the first to file  
20 provision, a standing provision that was essentially passed  
21 by Congress in order to provide some comfort to the  
22 government who were getting multiple filings on the same  
23 issue. And so in that case, the government can dismiss a  
24 second filed case if it adds no value or is what is noted as  
25 maybe a parasitic lawsuit.



1           In this case, the government didn't dismiss the  
2 seven cases for the first to file bar, and they in fact  
3 intervened in the cases. And at the time of intervention, or  
4 slightly before the time of intervention, they asked the  
5 relators to work together to come up with a way to divide the  
6 bounty that would come from this \$98 million settlement. And  
7 the relators entered into an agreement whereby they divvied  
8 up the money.

9           They asked the government to pay one relator, a  
10 relator that's in Chicago that was in the Northern District  
11 of Illinois, and the Government ended up paying that relator.  
12 And that relator paid a portion of the bounty to all seven  
13 relators that are encompassed by the settlement agreement.

14           And so going back to the time at which we filed  
15 the fee petition, you know, we first hear about this first to  
16 file rule, which is, you know, the case has been closed, as  
17 Your Honor noted, at least in the *Doghramji* case. And the  
18 case has been settled.

19           Essentially what we understand is that the  
20 defendants are seeking some sort of advisory opinion perhaps  
21 about what would have happened or should have happened had  
22 they filed a motion to dismiss way back when before they  
23 settled the case, or perhaps they are asking this court maybe  
24 to like entertain a motion to dismiss post settlement. It is  
25 unclear to me. The settlement itself -- we have some copies.

1 Your Honor. May I may I approach?

2 THE COURT: Sure.

3 MS. BUSCHNER: I think it is the first tab.

4 MR. GARRISON: It is actually the defendants.

5 MS. BUSCHNER: Oh, it is. Okay.

6 So, Your Honor, we had portions of the settlement  
7 agreement, and on page 10, paragraph 8, at the end of that  
8 paragraph it says: All parties agree that nothing in this  
9 paragraph or this agreement shall be construed in any way to  
10 release, waive or otherwise affect the ability of CHS to  
11 challenge or object to relators' . . .

12 Then it has a statutory provision there, 31 U.S.C.  
13 3730(d). And 3730(d) relates to the ability of prevailing  
14 parties to be paid for the work that they did in order to  
15 achieve the result, to achieve justice.

16 Nothing in this provision discusses raising issues  
17 that would be raised on a motion to dismiss or 3730(b)(5),  
18 which is the statutory section that involves the first to  
19 file challenge.

20 So and then if you will look at the next tab, this  
21 is really where relators reserve their right to get  
22 reasonable attorney's fees and costs. Page 15 at C,  
23 paragraph 1.

24 So the parties knew that this issue would confer,  
25 but they didn't, at least from our point of view, the

1 relators' point of view, no one in their farthest imagination  
2 believed that standing, something that's normally brought  
3 before a case is settled or resolved, would be brought to the  
4 forefront.

5           Having not been able to point to any extensive  
6 point in the settlement agreement, the defendants have made  
7 numerous arguments that somehow the statute allows them to  
8 escape paying fees and costs of relators who brought the  
9 claims and that were settled. But none of the statutory  
10 provisions that they cite in their briefs really say that.  
11 It is they have a strange interpretation of the statute  
12 essentially, which I guess they would say that unless the  
13 Government wrote the relator a check personally to each  
14 relator that they wouldn't be entitled to fees and costs even  
15 though they were a prevailing party.

16           And they have made numerous arguments in their  
17 briefs about that, and I am not sure that this is the time or  
18 the place to make all these arguments about why they believe  
19 that the first to file bar applies, or if it is encompassed  
20 by the settlement, or whether there should be some analysis.  
21 It does seem that the Court is interested in some kind of  
22 analysis of whether that claim is in fact one that could be  
23 made. And so we understand that, and, you know, we would  
24 work -- we'd like to work, you know, with the Court to  
25 address it, I guess, in the most expeditious manner possible,

1 in part because these issues of first to file have been  
2 already raised. They were raised in October in our case, and  
3 they were raised I think about the same time in the case that  
4 was in Texas.

5 And so and the other thing is, Your Honor, to be  
6 quite honest, I mean CHS and its affiliates had copies of our  
7 complaints prior to settlement going back to 2013. So even  
8 though the case was settled in 2014, they had redacted copies  
9 of our complaint. So it is not like this is, you know, it  
10 didn't dawn on them at the last minute that there were more  
11 than one relator or that there could be some challenge to  
12 bring, but yet they basically sat on their rates here. We  
13 would put forth here that they sat on their rates, and now  
14 what they really want the relators to do is to go through a  
15 long drawn-out process, part of which we have already gone  
16 through, to be honest with you, over the last couple of  
17 months in briefing these issues.

18 Now, it may be that it would be helpful to have  
19 some sort of consolidated briefing, if that's helpful to the  
20 Court at least, on the part of the relators, and so I guess  
21 what we were -- we had talked amongst ourselves about was  
22 possibly a situation where within 21 days we would do a  
23 consolidated brief. And if there were issues that were  
24 specific to one party, you know, that they would like to make  
25 that are different issues because of the timing of their

1 complaint or the issues, we could do something like that and  
2 then have maybe the defendant respond in 21 days and then a  
3 seven-day reply time.

4 I mean, we're really getting, you know, to the  
5 point where almost at a year since this settlement has been  
6 entered, and there has been, you know, hundreds of motions  
7 filed to stay and to raise these issues. But in part, you  
8 know, they have been briefed. And maybe they could be  
9 crystallized, and maybe we could do that in order to assist  
10 the Court because it seems like that may be where the Court  
11 is going.

12 But I guess that's sort of our proposal. But I  
13 don't want to cut off the other relators if they have other  
14 ideas or if there is things that I, you know, have missed  
15 here.

16 THE COURT: All right. Thank you.

17 MR. GARRISON: Your Honor, I'd like to introduce  
18 to the Court Jan Soifer from O'Connell & Soifer assisting Pat  
19 O'Connell with her. She is going to speak with regard to the  
20 *Cook-Reska* matter and *Reuille*.

21 MS. SOIFER: Thank you, Your Honor. My name is  
22 Jan Soifer, and Pat O'Connell and I are here from Austin,  
23 Texas. We represent the first two relators to have filed  
24 lawsuits against CHS or any of its affiliates of the seven.  
25 Nancy Reuille filed a case January 7th, 2009 in the Northern

1 District of Indiana. And Amy Cook-Reska filed a case May  
2 22nd, 2009 in the Southern District of Texas. So those two  
3 cases are the cases in which we represent relators of these  
4 seven cases. And --

5 THE COURT: I am sorry, when you say -- can we be  
6 clear? And I think Judge Sharp made reference to there might  
7 be another case. You are just dealing with four cases at  
8 this point?

9 MS. SOIFER: Yes, Your Honor, that's correct. So  
10 what happened is there were seven cases. Two of them CHS  
11 settled without the need for a fee application or a transfer  
12 to this court. So those two cases that were resolved are the  
13 third case and the sixth case. Leaving the first, second,  
14 fourth and seventh. So Mr. O'Connell and I and our law firm,  
15 O'Connell & Soifer, represent the relators in the first and  
16 second cases.

17 Mitch Kreindler back here represents the relator  
18 in the fourth case.

19 And Mr. Garrison and Ms. Buschner represent the  
20 relators in the seventh case.

21 And there is one more case out there.

22 THE COURT: What about the fifth case?

23 MS. SOIFER: That's the one more case out there.  
24 It is pending in the Southern District of Illinois, and it  
25 has not been transferred to this court, but neither has it

1 been resolved. I understand that one of the issues is that  
2 there is as part of that case a wrongful retaliation claim.  
3 And so I don't know why -- I think CHS could speak to why  
4 that case hasn't been transferred here yet or whether it in  
5 fact will be resolved there or transferred here.

6 But I can speak to the fact that the *Cook-Reska*  
7 case is a little bit different from the others in that Ms.  
8 *Cook-Reska* filed her case, as I said, in May of 2009 in the  
9 Southern District of Texas. She alleged wrongful admissions  
10 processes generally both through the emergency department,  
11 what we call ED admissions, what the settlement agreement  
12 calls ED admissions, and also through other parts of the  
13 hospital, direct admissions through the hospital for  
14 procedures and that sort of thing.

15 She also alleged some Stark and Anti Kickback  
16 violations. The case ended up settling with two separate  
17 parts. One part of the settlement was a nine million dollar  
18 settlement of Ms. Cook-Reska's claims for Stark,  
19 Anti-Kickback, and nonED admissions. And the rest settled  
20 with a \$88 million settlement of the ED, wrongful E D  
21 admissions. And those wrongful ED admissions were alleged by  
22 all seven cases.

23 But Ms. Cook-Reska was the first and only relator  
24 to raise the ones that were settled for 9 million dollars.  
25 Ms. Cook-Reska was allocated and received a direct relator

1 share or bounty from the court for the \$9 million. CHS  
2 hasn't paid our fees in that either. And they filed a motion  
3 to sever and transfer our fee claims for the ED claims here  
4 and to keep the fee claims for the nonED claims and the Stark  
5 Anti-Kickback case in Houston.

6           So we have gone through all sorts of briefing in  
7 Houston, as you might imagine. We filed a motion, a  
8 consolidated motion to receive our attorney's fees. They  
9 filed a motion to transfer and sever. They filed a response.  
10 We filed replies. They filed sur replies, et cetera, et  
11 cetera, et cetera.

12           The court stood with that sever and transfer and  
13 ordered us to file an amended fee petition for the nine ED  
14 Stark and Anti-Kickback claims only, which we have done.

15           We ended up asking that court to just transfer the  
16 whole case here because the problem is, as the Court might  
17 well imagine, as plaintiffs' lawyers when we recorded our  
18 time, there was a lot of time we spent just developing the  
19 case in its entirety, talking to our client, doing legal  
20 research, preparing the complaints that you can't sever  
21 between the two sets of claims that were settled.

22           We didn't foresee that they'd be settled in that  
23 manner, so there is a lot of time that falls into there. And  
24 the case law is really clear that you get paid, particularly  
25 in the Fifth Circuit the case law is clear if we had only



1 settled one set of claims or the other, we would get the time  
2 that we spent on all the others.

3           So we thought it should be all in one place. The  
4 Court has not ruled on our motion to transfer the rest of the  
5 case here.

6           THE COURT: So part of that case is still pending  
7 in Texas?

8           MS. SOIFER: That's correct.

9           THE COURT: So nine ED admissions involved?

10           MS. SOIFER: That's correct. Ms. Reuille's case  
11 had a retaliation piece of it which we ended up resolving,  
12 and then we transferred. We agreed to transfer the rest of  
13 the case here because all the other cases were being  
14 transferred here.

15           So there are seven cases. This court only has  
16 four of them. There is one more that could come here  
17 possibly plus the other part of our case of Cook-Reska's case  
18 could come here possibly. But overall, the settlement of the  
19 seven cases cost CHS almost a hundred million dollars. And  
20 the seven different cases we all work together, particularly  
21 the lawyers in these four cases. And the relators in these  
22 four cases that are before this court, we all worked together  
23 with the Government at the Government's direction for many  
24 years. In fact, Ms. Cook-Reska has been working with the  
25 Government since she filed her case in May of 2009. And then

1 when the other cases were filed, we all started working  
2 together. And despite the more than six years of work that  
3 we have done on behalf of Ms. Cook-Reska's case on the first  
4 and on behalf of Ms. Reuille's case, despite the government's  
5 intervention in all seven cases and despite CHS's requirement  
6 in the settlement agreement that all seven relators' cases be  
7 dismissed and all of our claims be dismissed, even the ones  
8 that were not resolved by settlement and for which CHS knew  
9 that the relators were all receiving a portion of the relator  
10 share because the government required that we all get  
11 together and work out a deal.

12 And CHS knew that we were all going to get  
13 together and work out a deal. We did. They still haven't  
14 paid except for the third and sixth cases.

15 And in fact, they won't even pay Ms. Cook-Reska to  
16 whom the government directly allocated relator share in two,  
17 on both parts of her case. The government directly allocated  
18 a relator share on the \$9 million which is now in Houston,  
19 but they also directly allocated a relator share in part of  
20 the remaining \$88 million.

21 THE COURT: Why just part?

22 MS. SOIFER: Well, the government has a  
23 convoluted explanation, but essentially they allocated a  
24 relator share for the one hospital in which Ms. Cook-Reska  
25 focused her efforts and that they paid on behalf of the court

1 reparant.

2           So they did write us a check for both parts of the  
3 settlement. They did write Ms. Cook-Reska a check, and they  
4 still won't pay her attorney's fees. And they are still  
5 contending that they don't have to. And they are -- I will  
6 let them explain their arguments.

7           THE COURT: Well, they are saying they should only  
8 be paying attorney's fees on --

9           MS. SOIFER: In one case.

10          THE COURT: In case one?

11          MS. SOIFER: Well, they are saying in case three  
12 and they also paid in case six. And the truth is that's not  
13 how the False Claims Act works. The False Claims Act works  
14 based on claims, not on cases. So of course they have to pay  
15 attorney's fees on successful claims. And they are coming up  
16 with this argument that they only pay in one case when in  
17 fact the cases may have different claims, which is one of the  
18 issues that we all have.

19           But in addition in a case like this where all of  
20 the relators worked together to the benefit of all of the  
21 relators and to the benefit of the government, it is our  
22 contention that the -- and let me add this. The government  
23 allocated the work so that we didn't duplicate effort. There  
24 were several million documents that CHS produced, and the  
25 government doled them out to us. We didn't get to choose

1 which ones we reviewed, but the Government doled them out to  
2 us and then had us not only review and tag and summarize  
3 those documents, the hot ones, but they also asked us to  
4 prepare deposition outlines for them to use, which we all  
5 did.

6           And so we did all of this work that all resulted  
7 in this almost hundred million dollar settlement, and now CHS  
8 wants to say, oh, we only have to pay one relator's counsel.  
9 And it is that that we all contend is not only not supported  
10 by the statute, not supported by the facts, not supported by  
11 anything other than this convoluted argument that they are  
12 making.

13           So our interest in all of this, Your Honor, is  
14 resolving this as soon as we can. As the Court can well  
15 imagine, having worked on these cases for more than six  
16 years, having settled, reaching a handshake settlement almost  
17 a year ago and a final resolution last August, we are still  
18 out here and we have been forced to file all of these  
19 different pleadings in two different -- actually three  
20 different courts because we had the case in Indiana as well.  
21 And at this point we just want to have this over with, and  
22 so the schedule that we all came up with that would have us  
23 filing whatever pleading the Court wants in three weeks  
24 from -- 21 days from today. Have CHS file a response 21 days  
25 after that. And then have us file a reply seven days after

1 that, and then let's have a hearing as soon after that as  
2 possible which puts us to the beginning of June.

3 So that's the schedule that we are recommending  
4 and requesting that makes the most sense. Of course all of  
5 these issues have already been briefed by one or another  
6 party and often by multiple parties. But that's sort of  
7 where we are.

8 THE COURT: Well, do you anticipate -- I mean, I  
9 am looking at Judge Sharp's order which basically referred to  
10 me the schedule for what you all are going to do next. Now,  
11 the what you all are going to do next may be subject to some  
12 disagreement, but it seemed to me that there might be some  
13 discovery issues before the briefing.

14 MS. SOIFER: Well, actually I should let Mr.  
15 Garrison and Ms. Buschner talk about that because they do  
16 have a discovery request outstanding.

17 MR. GARRISON: Yes, Your Honor. The discovery  
18 dispute concerns we have been asked to take discovery on  
19 CHS's fees, their hourly rates and the amount of work they  
20 did on the same case that we were working on. You know,  
21 because of how Judge Sharp has, as we see it, set forth the  
22 first issue is really whether we are entitled to fees or not  
23 at all, yes, we would like for you to, you know, order CHS to  
24 produce those billing records to us because we think the  
25 Sixth Circuit law is pretty clear.

1           But that issue could wait until after Judge Sharp  
2 says yes, pursuant to the settlement agreement relators are  
3 entitled to fees.

4           And then of course, as we see it, CHS is entitled  
5 to object to the amount of those fees, and then that's when  
6 that discovery issue would be clearly ripe. We think it is  
7 already ripe because we think it is pretty clear that we're  
8 entitled to fees, but that's what the discovery issue is. So  
9 I don't think that there is a discovery dispute to be  
10 resolved to enter this order about how we proceed.

11           THE COURT: All right. So we're talking about --

12           MR. GARRISON: That you are fine to go ahead and  
13 order that discovery be produced. We would like that, but we  
14 can also come back once that determination is made.

15           THE COURT: So you are talking about scheduling  
16 briefing at this point? That's all we're here for?

17           MS. SOIFER: Yes, Your Honor.

18           MR. GARRISON: And a hearing.

19           MS. SOIFER: And a hearing in front of Judge  
20 Sharp. We'd like to have a date to work towards.

21           THE COURT: I can --

22           MR. GARRISON: Your Honor, the order that he  
23 entered for us and for you contemplates a hearing. It uses  
24 the plural term *hearings*, but we think one hearing pursuant  
25 focused on whether the settlement agreement has entitled

1 relators to recover their fees or not is what is appropriate.  
2 It is on I believe the second to last page of the order  
3 contemplates it.

4 THE COURT: I can't set definitively a hearing for  
5 you today. I can look at Judge Sharp's calendar and tell you  
6 what might look good, and you all can tell me what your  
7 schedules are so I can get with his office and hopefully set  
8 a hearing on that date. And I'd probably like more than one  
9 date from you all because sometimes what I have for his  
10 calendar may not be the actual calendar that we should be  
11 looking at because he might not be -- he might be gone that  
12 week, or he might have other things scheduled that I am not  
13 aware of. So that's the best I can do on that issue.

14 MS. SOIFER: Absolutely. And with the three  
15 weeks, three weeks, one week schedule that we're proposing,  
16 it looks like the first or second week of June would be  
17 workable for the hearing.

18 THE COURT: And how long do you think such a  
19 hearing will last?

20 MS. SOIFER: You know, if the Court wants to hear  
21 from all of us, my guess would be a couple of hours.

22 THE COURT: I mean I can look at his calendar just  
23 for fun at this point. Have you mapped out your proposal?  
24 What did you say 21, 21?

25 MS. SOIFER: And seven. Yes, Your Honor, I have.

1 And in fact 21 days from today would be April 28, and then 21  
2 days after that would be May 19th. And seven days after that  
3 would be May 27th.

4 THE COURT: And who goes first?

5 MS. SOIFER: The relators' counsel.

6 MR. WALDMAN: We may have something to say about  
7 that, Your Honor.

8 THE COURT: About who goes first?

9 MR. WALDMAN: Yes, Your Honor.

10 MS. SOIFER: Our motion for fees, Your Honor.

11 THE COURT: Well, just for your information, it  
12 looks to me as if on Monday, June 13th, might be possible.

13 MR. JACOBSON: Your Honor, I think that's a  
14 Saturday.

15 THE COURT: I am in 2016. Forgive me. Thank you.  
16 It is where the calendar was. I thought it was pretty  
17 sparse. Doesn't look nearly as good for 2015.

18 Well, just a quick look at his calendar indicates  
19 to me that it might be possible to look at June 22nd. I know  
20 that you would probably like to have it earlier, but I am  
21 looking at -- and I have to tell you that what's on the  
22 calendar does not necessarily mean that that's what's going  
23 to be happening. That's just what is scheduled. And a lot  
24 of these cases may go off in the interim. There are -- but  
25 the problem I have is that normally Judge Sharp reserves



1 Mondays for things like pretrial conferences, sentencings,  
2 pleas and hearings. So not necessarily that priority order,  
3 but if it were in that priority order, then you have to take  
4 that into account because you don't know how long some of  
5 these trials may last. They may last -- the trial starts on  
6 Tuesday. Could last until Friday, and then he tries to  
7 squeeze in some of those things on Friday afternoon. But I  
8 think your best bet would be on a Monday.

9           The problem is June first he's scheduled to have  
10 pretrial conferences in Cookeville, which really makes it  
11 impossible for him to be two places at once. And my guess is  
12 you all do not want to go to Cookeville just to accommodate  
13 his calendar. It is like an hour and a half away.

14           So in looking at his calendar, as best I can glean  
15 from it, and some of these trials are carried over into  
16 Monday. Your best bet, earliest bet would be June 22nd. I  
17 mean, I can certainly try to get an earlier date, and then  
18 after that July 20th. But what I think I'd like to do once I  
19 hear from all of you is find out what your schedules look  
20 like and what would be a -- what dates you could not do it  
21 and then get with Judge Sharp's office and say when can you  
22 squeeze this in. And we're talking two hours. I think this  
23 June 22nd at 11 might be possible. That's just looking at  
24 his calendar. He may say absolutely not I have got something  
25 else scheduled at exactly that time frame, but that's the

1 closest I can see that will work. But there may be other  
2 options that he can think of, knowing his calendar better  
3 than I do just looking on a screen.

4 And I interrupted you.

5 MS. SOIFER: All I wanted to say is that in two of  
6 the four cases that are now consolidated, we have filed  
7 motions to recover our fees. And that's in the *Cook-Reska*  
8 case and in the *Doghramji* case. The idea that defendants  
9 might get to file something before us when we have got  
10 pending motions, if they had something to file, this  
11 settlement happened in August. Why didn't they file it  
12 sometime between August and now?

13 And the fact that we have already filed ours and  
14 the fact that the two cases that got transferred in later,  
15 which are -- I will let Mr. Kreindler talk about his the  
16 *Bryant* case, which is the fourth, and the *Reuille* case, which  
17 is the first. The only reason they didn't get transferred in  
18 sooner and that they haven't had fees, motions for fees filed  
19 yet is because they have retaliation claims that had to be  
20 resolved first.

21 And until the retaliation claims were resolved and  
22 dismissed, the fee question wasn't ripe. And that has just  
23 happened in the *Reuille* case. And I will let Mr. Kreindler  
24 talk in particular about the *Bryant* case. But the bottom  
25 line for us, Your Honor, is that we think that the fee issue

1 questions are ripe. That we think there is -- that it would  
2 be completely inappropriate for the defendants to get to rush  
3 in and file something before our motion for fees, our  
4 entitlement to fees get heard and that we should move forward  
5 with this question which the judge has already teed up the  
6 entitlement to fees and that we, as the prevailing parties  
7 who are seeking our fees, ought to be able to file the first  
8 filings.

9 THE COURT: Well, we're just talking about teeing  
10 up for and briefing on the entitlement to fees, not the fees  
11 themselves. The entitlement to fees. Is that correct? And  
12 that's what the hearing is going to be about; is that  
13 correct?

14 MS. SOIFER: My understanding from the way the  
15 judge wrote this order is that that is what he intended. Of  
16 course, we and the *Doghramji* relators have already filed  
17 motions that include those issues, our entitlement to fees  
18 and the amount of fees. But if the Court prefers, and it  
19 seems from the way he wrote this order that he does, that we  
20 do two separate motions. All the more reason to get this  
21 first motion dealt with soon so that we can move forward with  
22 the second.

23 THE COURT: Okay.

24 Yes, sir.

25 MR. YOUNG: Stephen Young, a member of the

1 Nashville Bar. I am local counsel on behalf of Kathleen  
2 Bryant, who is one of the relators. I want to introduce you  
3 to Mitch Kreindler, who is from Houston, Texas.

4 MR. KREINDLER: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. KREINDLER: I don't want to retread all that's  
7 been spoken so far, but I do want to talk a little bit about  
8 the *Bryant*. Kathleen Bryant's case was the fourth filed in  
9 the series back in July of 2010, so it wasn't a recent filing  
10 and obviously stretches back almost five years at this point.  
11 It was filed in Houston. Ms. Bryant, in our mind, first to  
12 file is important. Whether it is relevant to the case or  
13 not, we believe she was first to file with respect to the  
14 hospital where she worked, at a minimum, which was Heritage  
15 Medical here in Tennessee ironically. But that case was  
16 pending since July of 2010 until last summer until the cases  
17 were settled. It was a part of the overall settlement that  
18 you have heard about.

19 The tension in the False Claims Act is between  
20 3730(d), which is provision that provides a relator share and  
21 attorney's fees to relators and the defendants have believed  
22 is this first filed provision. And the problem is that if  
23 you look at 3730(d), you will see that it is a mandatory  
24 provision.

25 It says that when the government joins your case,

1 the relators are entitled, they shall receive a relator  
2 share, and they shall receive attorney's fees. So it is a  
3 mandatory provision. And it creates this tension that has  
4 brought us here today.

5 The facts of the case, I think, favor the  
6 relator's position because you heard Ms. Buschner talk about  
7 how this issue came about and how the defendants never raised  
8 this issue and how the settlement agreement talks only about  
9 3730(d) and not the first to file provision, which is (b)(5).

10 During that time, all of the relators, including  
11 Ms. Bryant --

12 THE COURT: I am sorry, the first to file  
13 provision is what?

14 MR. KREINDLER: It is (b)(5), Your Honor.

15 THE COURT: B as in boy?

16 MR. WALDMAN: D as in Dan.

17 THE COURT: Oh, still D, (d)(5). Okay. D as in  
18 what?

19 MR. KREINDLER: My brother's name, Dan.

20 THE COURT: I thought you said something else.

21 MR. KREINDLER: It is (d)(3), isn't it? Let me  
22 get that for you. But the point is that the way this  
23 settlement occurred, people like Ms. Bryant were asked in  
24 order to participate in the case -- the government intervened  
25 in her case -- she was asked to release claims, other claims

1 on which the government was not collecting recovery. Now,  
2 under the False Claims Act, she has the right to proceed on  
3 those claims on her own. But she detrimentally relied on  
4 this settlement and on the notion that she was going to  
5 receive relator share through the agreements that were worked  
6 out and that her counsel were going to be receiving  
7 attorney's fees based on the provision in the settlement  
8 agreement that ties the settlement issue only to (d)(3), to  
9 the provision relating to payment of attorney's fees.

10 THE COURT: But she did get her relator share?

11 MR. KREINDLER: Yes, Your Honor. And so we have  
12 this situation where she severed her other claims. And if  
13 the defendants are right that this whole thing should be  
14 unwrapped, then I am not sure what you do with the procedure  
15 because technically maybe her other claims should be  
16 reinstated and you unwrap this settlement and say, okay,  
17 let's put it back to where it was because this wasn't what  
18 she signed on for.

19 And so she gave her broad release. She  
20 detrimentally relied on the language of the settlement  
21 agreement that was laid out for you, and so what you have,  
22 Your Honor, is a little bit of buyer's remorse from the  
23 defendants. They don't want to pay all the fees. The total  
24 fees from all lawyers' counsel, if you didn't discount any,  
25 just pay all of them, it is about ten percent of the total

1 settlement, which is not exactly an exorbitant amount that  
2 would shock the conscience when you just glance at the  
3 numbers.

4               So we're interested in getting this quickly  
5 resolved. I think this schedule Ms. Soifer has described to  
6 you is one that would be workable for the parties, for the  
7 relators. Thank you.

8               THE COURT: Thank you.

9               MR. GARRISON: Your Honor, just one more thing to  
10 add. I want to make a correction on what's been said. Mr.  
11 Waldman said that the first to file issue is in D as in Dan.  
12 That's not correct. It is B as in boy. Five as in the  
13 number five. I have got that from the statute but also from  
14 the defendant CHS's response on page one says: The relators  
15 are not the first to file claims which the government settled  
16 with defendants, so their complaint is jurisdictionally  
17 barred. And they cite 3730(b)(5).

18               That's just important because the settlement  
19 agreement contemplates D as in Danny which is relates to who  
20 receives the shares. All the relators received a share. We  
21 wanted to be sure before we spoke out. It is the settlement  
22 agreement refers to D. First to file is in B as in boy.

23               THE COURT: Yes, sir.

24               MR. JACOBSON: Good morning Your Honor. I think  
25 the relators counsel have had their peace. I'd like to

1 introduce to Your Honor Mr. Michael Waldman. He is from the  
2 Washington, D.C. bar, the Robbins, Russell firm.

3 THE COURT: Thank you.

4 MR. WALDMAN: Good morning, Your Honor.

5 THE COURT: Good morning. Can't say that much  
6 longer. A few minutes where you can still say good morning.

7 MR. WALDMAN: I wanted to start by first  
8 confessing that I am not prepared today to argue our entire  
9 first to file motion. We have set this out in Document  
10 Number 115 in the -- in this case, and you can read it there.

11 I would note that on the issue of the all of these  
12 cases being consolidated, the chief argument against  
13 consolidation and against transferring to this jurisdiction  
14 was plaintiff saying, oh, there is no real first to file  
15 issue. This is somehow a, what was the word, contrived  
16 argument or something like that.

17 And the judge disagreed with that. Judges around  
18 the country sent the cases here over that objection. And  
19 this court consolidated them because they believed there was  
20 a legitimate first to file argument, and I think that's  
21 reflected in the consolidation order.

22 I am also not really prepared to go through long  
23 and torturous history in the Southern District of Texas, I  
24 believe it is, wherever Houston is where we are litigating  
25 with Cook-Reska about her entitlement to fees there.



1 Actually not her entitlement. We actually concede her  
2 entitlement in fees there. It is more about the amount of  
3 the fees. And we believe that's the proper jurisdiction. It  
4 is fully briefed. It is in front of the judge in Texas, and  
5 I don't know why this court needs to involve itself in all of  
6 that.

7           There is clearly concern on the part of the  
8 relators that they are not entitled under the first to file.  
9 And they have all sorts of arguments as to all the work they  
10 did, et cetera, which we would say this is what Congress  
11 passed, the President signed. It is the law. There is a  
12 first to file bar, and you can't have seven different  
13 relators entitled to recover under a first to file bar.

14           It was intended to encourage relators to come  
15 forward, and here we have an instance where there were  
16 relators who have filed years before, for example, Mr.  
17 Garrison's client had filed their petition and their petition  
18 was filed after the case Tenin (phonetic) case that had been  
19 filed and got a huge splash around the country which raised  
20 the very same issues about ED admissions. And we believe  
21 there is also a substantial public disclosure bar issue that  
22 their client faces.

23           So, again, I don't want to argue the merits, but I  
24 do want to discuss a little bit about the background also and  
25 about how this motion to dismiss comes about because -- and a

1 little of the history because I think it will explain why we  
2 agree there should be briefing but believe we should be the  
3 moving party because that's how this typically comes about.

4           We -- there was a government investigation gone on  
5 for a number of years about the admissions. We negotiated  
6 directly with the Justice Department, and at some point in  
7 2014 we reached an agreement with the Justice Department.  
8 And at that time we were told, well, there are also these qui  
9 tam relators out there. So we have agreement in principle  
10 with the Justice Department. We said, well, as any sensible  
11 defendant would say, we need a settlement with everybody.  
12 This case should be resolved. And we --

13           THE COURT: Are all the qui tam cases sealed up to  
14 that time?

15           MR. WALDMAN: They were sealed. We did not until  
16 2014, we had never seen them. Never heard of them.

17           MS. SOIFER: That's not correct, Your Honor.  
18 *Cook-Reska* was unsealed I believe in 2012. Maybe 2011. And  
19 *Reuille* was --

20           MR. WALDMAN: *Reuille* was the only one that was  
21 unsealed.

22           MS. SOIFER: *Reuille* was unsealed in December of  
23 2011. And I am not sure of the exact, but *Cook-Reska* was  
24 partially unsealed and provided to them.

25           MR. WALDMAN: No.

1 MS. SOIFER: I will find the exact date.

2 THE COURT: I didn't think that would be a  
3 controversial question. I was just asking for historical  
4 information.

5 MR. WALDMAN: Historical information is it may  
6 have been unsealed. It was not provided to us, this is  
7 *Cook-Reska*, until 2014.

8 MS. SOIFER: That is completely incorrect, and I  
9 will find the docket entry. I know that we provided it to  
10 the Government. The Government provided to them because we  
11 were given information that not only did the Government  
12 provide it to them in redacted form, but then were able to  
13 unredact it and see our client's name. So we know that we  
14 had a copy of it. Mr. Waldman himself didn't, but CHS did,  
15 and they began negotiating our case in 2012. I will find the  
16 date.

17 THE COURT: Let's go back to where we were.

18 MR. WALDMAN: Go back to the important part, Your  
19 Honor. The case was never served. We were never served  
20 with a complaint. We had never whether *Reuille* was the only  
21 one I am aware that was unsealed. There may if we got a  
22 redacted version in 2013 of *Cook-Reska*, I certainly don't  
23 remember. There are seven of them. I can tell you that we  
24 definitely didn't receive a majority of them or all of them  
25 until 2014. Even if we received a version, a redacted

1 version in 2013, the key point here is, Your Honor, we were  
2 never served -- the cases were not unsealed, and we were  
3 never served with a complaint.

4           How this case would have proceeded had the case  
5 and we reached a settlement, the settlement clearly I mean  
6 when we reached our settlement and negotiated our settlement,  
7 Your Honor, the settlement clearly carved out attorney's  
8 fees. And let me read, Your Honor, from paragraph 8 of the  
9 settlement agreement. It is right at the bottom. It is the  
10 last sentence on paragraph 8 on page 10. All parties agree  
11 that nothing in this paragraph or this agreement shall be  
12 construed in any way to release, waive, or otherwise affect  
13 the ability of CHS to challenge or object to relator's claim  
14 for attorney's fees, expenses and costs pursuant to 31 U.S.C.  
15 3730(d).

16           That is added -- that was special language added  
17 by us. Part of the agreement. Clearly we spelled out that  
18 we intended to challenge these attorney's fees.

19           Had this case gone forward, the first thing -- had  
20 we actually been served with a complaint. Again it was never  
21 unsealed, never served with a complaint. We to this day have  
22 never been served with a complaint. What we would have done  
23 would have been to move for dismissal for failure to satisfy  
24 3730(d). And that would have been the motion we would have  
25 filed.

1 THE COURT: Are we into (d) or (b)?

2 MR. WALDMAN: Under D, they have to receive  
3 portion of their share. Under B, they also have to be the  
4 first to file.

5 There is also a public disclosure argument as to  
6 some of them, and I can't remember which one that's under.  
7 So there would have been a number of grounds to dismiss on  
8 those bases.

9 Your Honor, these are considered jurisdictional  
10 issues. I can cite you to the treatises and the cases if  
11 Your Honor would like that indicate that these are the  
12 procedural -- excuse me, these are jurisdictional issues. So  
13 as with any jurisdictional issue, it is the first thing that  
14 has to be addressed, and it would have been a motion to  
15 dismiss for lack of jurisdiction because they failed to meet  
16 the statutory requirement.

17 So that is how this issue should be raised. We  
18 should file a motion to dismiss.

19 THE COURT: Motion to dismiss what?

20 MR. WALDMAN: Motion to dismiss this court's  
21 jurisdiction for this fee dispute.

22 THE COURT: I understand what you are saying, but  
23 had you been served with a complaint in the qui tam cases,  
24 you would have treated as you would any other case. You  
25 would have looked at it to see if you had grounds,

1 jurisdictional grounds or other grounds to file a motion to  
2 dismiss. You are saying we pointed to some jurisdictional  
3 issues. We certainly would have raised them early on. But  
4 what happened in fact was the case got settled before that  
5 point.

6 MR. WALDMAN: Correct, Your Honor. And so we have  
7 no opportunity to make that motion. Now we have --

8 THE COURT: But that was your own choice. You  
9 would have made those motions should you have declined to  
10 enter into a settlement.

11 MR. WALDMAN: We hadn't asserted anything, Your  
12 Honor. We entered into a settlement with the Justice  
13 Department, and now we would like to make those motions as to  
14 the fee petition.

15 THE COURT: Then clearly the settlement agreement  
16 included the relators' claims. It refers to the relators in  
17 the settlement agreement. It is not just a settlement with  
18 the United States. Is it not? Am I wrong about that?

19 MR. WALDMAN: Yes, Your Honor, but put it the  
20 other way. How are we to move to dismiss a case that was  
21 still under seal and that we had never been served with?

22 THE COURT: Well, I think the answer is you don't  
23 settle on behalf of in regard to those claims, and you let  
24 the process play out so that you get served. You tell the  
25 Government, We're not settling all for the relators' claims.

1 We settle for you, but we're not going to settle on based on  
2 the relators' claims. We want to be served. We want to  
3 dismiss the relators' claims.

4 MR. WALDMAN: But now what we're saying, Your  
5 Honor, there is a fee issue that's before the Court, and we'd  
6 like to move to dismiss that fee petition. Whatever fee  
7 petitions that you want to raise.

8 THE COURT: You don't want to dismiss something  
9 that has been filed. You need to deny that. I mean, you are  
10 seeking to deny it. They filed a fee petition.

11 MR. GARRISON: Yes, Your Honor. It is under tab  
12 14.

13 THE COURT: And where is that right now? Is that  
14 still pending?

15 MR. GARRISON: It was denied as without prejudice.  
16 That order was referred to you.

17 THE COURT: Pending briefing on this.

18 MR. GARRISON: Correct.

19 THE COURT: But I am not sure that it really  
20 matters who goes first on this issue, but this issue I think  
21 is an issue to dismiss the attorney's fees that at this point  
22 aren't even pending. But I think we're looking at this as a  
23 threshold issue. The threshold issue is does the first to  
24 file have applicability in this situation. Isn't that what  
25 we're talking about?

1 MR. GARRISON: Yes, Your Honor.

2 MR. WALDMAN: I don't disagree, Your Honor.

3 THE COURT: Not the specific amount of attorney's  
4 fees that it has been requested and will be requested  
5 to -- well, in some form it will be requested. I mean you  
6 will be paying attorney's fees for at least one case.

7 MR. WALDMAN: Your Honor, that's we believe we  
8 have already paid for that. That was the case we settled.  
9 But that would be the issue before the Court.

10 THE COURT: You think you have already paid your  
11 attorney's fees?

12 MR. WALDMAN: We believe we have settled with the  
13 party that was the first to file.

14 THE COURT: And who was that?

15 MR. WALDMAN: That was Dr. Plants.

16 MS. SOIFER: The third case.

17 THE COURT: Oh.

18 MR. WALDMAN: Your Honor, the relator in the  
19 sixth case, their fees were resolved as well. So, Your  
20 Honor, let me --

21 THE COURT: I am getting confused about which is  
22 the sixth case now.

23 MR. GARRISON: Dr. Mason.

24 THE COURT: That case isn't here either?

25 MR. GARRISON: Not here, Your Honor.



1 THE COURT: All right. Yes, sir.

2 MR. WALDMAN: Let me try a different tack. They  
3 are going to file, you know, they have no petition filed on  
4 currently before the Court that was denied by the Court.  
5 There is actually nothing before the Court. So we are going  
6 to -- they will propose that their first brief says something  
7 that says it's got to say something like defendants are going  
8 to try to strike our fee petition for the following reasons,  
9 and here is what these reasons are. And we think that they  
10 are going to argue and let us try to respond to them in the  
11 first filing. It doesn't make a lot of practical sense  
12 either. We are going to -- doesn't it make more practical  
13 sense for us to say we think that they don't have  
14 jurisdiction. We think they failed to meet the first to  
15 file.

16 We think some of these cases fail under the public  
17 disclosure bar. And they then can respond and say no, no,  
18 defendants have it all wrong. And so I guess I have real  
19 questions about whether it makes any sort of logical sense to  
20 have them go first.

21 THE COURT: I believe I understand that. I just  
22 reacted to your wanting to dismiss something that's not even  
23 there, and I am not sure --

24 MR. WALDMAN: It is very -- Your Honor, you are  
25 absolutely right. It is a very weird situation, as you said

1 when you first took the bench. This is a closed case. So  
2 what are we supposed to do? You know, what are we supposed  
3 to do? It is the motion to dismiss, or the case has been  
4 dismissed so we are all sort of --

5 THE COURT: On a settlement that you reached in  
6 all of the cases.

7 MR. GARRISON: Correct, Your Honor.

8 THE COURT: All of them. I do -- and in reading  
9 Judge Sharp's order, I didn't realize there was anything  
10 about the public disclosure bar. Did he mention that in his  
11 order?

12 MR. WALDMAN: Judge, if you go to the first  
13 paragraph, the end of the first paragraph of the order.

14 THE COURT: Yes, sir.

15 MR. WALDMAN: And he says proprietary.

16 THE COURT: You are right.

17 MR. WALDMAN: And then, Your Honor, if you go I  
18 think later on he says he also references it once or twice.  
19 If you look on page 4, the second full paragraph, he mentions  
20 we were disinclined to address settlement prior to resolution  
21 of the first to file, public disclosure bar. I could  
22 probably find one or two other references throughout.

23 And if you turn to 115, which was our opposition  
24 which has now all been mooted, you will see that we were  
25 relying on the public disclosure bar.

1           THE COURT: I am not at all surprised that you  
2 raised it. My questions was what did Judge Sharp intend that  
3 we address?

4           MR. WALDMAN: I think plaintiffs may have a  
5 different view, but I think it makes sense to deal -- these  
6 are all threshold issues. Makes sense to deal with them all  
7 together.

8           THE COURT: And I understand that, but then if you  
9 look on page five where it says, Accordingly, the Court rules  
10 as follows. In the first paragraph, These four cases are  
11 hereby consolidated for the purposes of scheduling, resolving  
12 pending motions -- which there are none at this point -- and  
13 discovery disputes, and coordinated hearings relating to the  
14 first to file determination regarding entitlement to  
15 attorney's fees and costs.

16           And I guess I looked at that thinking that that's  
17 what we were doing was the first to file issue only. And you  
18 are saying no, no, there are other issues as well, including  
19 the public disclosure bar. And then you talk about no  
20 jurisdiction. I am puzzled about the no jurisdiction issue.

21           MR. WALDMAN: Also, Your Honor if you look at the  
22 bottom of 3, the last paragraph, the beginning first  
23 sentence.

24           THE COURT: Yes. So what are you talking about  
25 when you talk about jurisdiction? Are you talking about the

1 first to file rule? Are you talking about the public  
2 disclosure bar? You are not talking about anything else?

3 MR. WALDMAN: That's correct.

4 THE COURT: Those are your two issues?

5 MR. WALDMAN: Yes, Your Honor.

6 THE COURT: So your whole dispute right now is who  
7 goes first?

8 MR. WALDMAN: I believe so, Your Honor. We are  
9 fine with the plan to address these issues initially. I  
10 think that's the right thing to do.

11 MR. GARRISON: Your Honor, the issues have been  
12 addressed. I think one of our concerns is that obviously  
13 they believe first to file is a defense or an objection,  
14 maybe an affirmative motion in defense for standing. They  
15 also raise public disclosure. They may raise, I guess, other  
16 jurisdictional.

17 THE COURT: He just told me two things, first to  
18 file and public disclosure bar.

19 MR. WALDMAN: But in our response to the fee  
20 petition, there are other issues they have raised. I don't  
21 know why they wouldn't raise them again. Our concern about  
22 allowing them to go first is we don't want this whole process  
23 framed on, you know, one issue at a time that they raise in  
24 the first round of motions. We have a local rule. We have a  
25 statute that allows relators to petition for fees with a

1 settlement agreement that allows relators to petition for  
2 fees. We understand the judge's order, but our concern is if  
3 you read the rest after his order began on page five, yes, he  
4 says first to file determination, but he concludes by saying  
5 that that's regarding entitlement to attorney's fees. And  
6 our concern is that we -- you could list up next to that  
7 first to file determination every other determination that  
8 they think should be made to deny or entitlement to  
9 attorney's fees. So if you let the defense go first and a  
10 petition bringing issues that have to be raised by relators  
11 or the plaintiffs, that could result in multiple rounds of  
12 briefing, whereas if the judge determines that we're not  
13 entitled to our fees, then obviously that litigation ends in  
14 the district court.

15 THE COURT: Well, that's why I think this is a  
16 threshold determination. And I assume that at this hearing  
17 and in your briefing, we're not going to be talking about how  
18 much fees -- what the number is on the fees to which you are  
19 entitled.

20 MR. GARRISON: That's correct.

21 THE COURT: You are just talking about the  
22 threshold issue. And maybe it does make sense for you  
23 to -- for the defendant then to come back to make the opening  
24 salvo and say as a threshold issue these people should not  
25 get fees at all. Is that right? None of these people here

1 should get fees. That's your position?

2 MR. WALDMAN: That is correct. That is our  
3 position.

4 THE COURT: Because first to file. Because public  
5 disclosure bar. Because anything else? Those are your two  
6 things.

7 MR. WALDMAN: Those will be the two issues that we  
8 are going to raise, Your Honor.

9 THE COURT: And you are not going to raise any  
10 other issues any other time. This is it.

11 MR. WALDMAN: We agree, Your Honor, although let  
12 me just point out Mr. Garrison's concern is that we're going  
13 to raise additional issues. You can just see if they were to  
14 go first and we were to raise an additional issue second,  
15 they would be screaming bloody murder saying geez, we never  
16 anticipated that in our initial brief. And it makes more  
17 sense to us to go first. That takes care of the concern that  
18 Mr. Garrison has raised.

19 MR. GARRISON: That's not true, Your Honor. Judge  
20 Sharp would ask for replies, and we would address any other  
21 issues that we didn't anticipate in the reply. He allows  
22 replies. Then we would address those issues, and they would  
23 be all fully briefed our reasons for getting fees, their  
24 reasons for why we shouldn't get fees.

25 MS. BUSCHNER: The other question I am just

1 wondering, Your Honor, is what is the procedure about where a  
2 defendant -- I mean, what does he filing a motion to dismiss  
3 or a motion for advisory opinion? I mean, is there any  
4 procedural mechanism for them to file something at this point  
5 in the litigation? I mean, it seems to me that, you know,  
6 the plaintiffs have put forth their petitions, and the judge  
7 has dismissed with them without prejudice to refile.

8 THE COURT: After the resolution shall issue. So  
9 how do we tee up that threshold issue. That's what you are  
10 asking.

11 MS. BUSCHNER: Right.

12 THE COURT: Procedurally, how is that?

13 MS. BUSCHNER: The plaintiff has the burden to  
14 move. They are a prevailing party, right? So it seems in  
15 that respect it seems logical for us, and it is not like  
16 we -- I mean, the brief that they have already submitted are  
17 close to a hundred pages long, if I recall. I mean, there  
18 may be some argument that they are going to, you know,  
19 thought up over the last couple of months or whatever, but I  
20 mean, I don't really see what it is -- as Mr. Garrison said,  
21 we could reply to those.

22 THE COURT: You could.

23 MS. SOIFER: In terms of the motion to dismiss,  
24 the case, the claims were settled. The cases were dismissed.  
25 That allows us to go forward with our motion for fees. So

1 what are they moving to dismiss? They -- we already resolved  
2 all the underlying claims.

3 THE COURT: I don't think you can call it a motion  
4 to dismiss. It is not a motion to dismiss. Motion to  
5 dismiss what? It is a -- you are saying that procedurally on  
6 behalf of the relators it makes more sense for the plaintiffs  
7 to go first because it is their burden to show that they are  
8 entitled to attorney's fees. This is a different situation  
9 than you normally have. You already went first. You already  
10 filed your application for attorney's fees, and then there  
11 was a response to it raising a whole bunch of issues. Some  
12 of which I assume if you are not successful on this threshold  
13 issue, you are going to raise again in terms of duplication  
14 of work, excessive time.

15 MR. WALDMAN: That the fees are too high. Yes of  
16 course, Your Honor.

17 THE COURT: Are you going to raise anything else  
18 other than normal things you'd raise to an attorney's fee  
19 petition?

20 MR. WALDMAN: I can't think of anything, Your  
21 Honor.

22 THE COURT: Why was there a hundred pages  
23 worth -- obviously I have not read a hundred pages.

24 MR. WALDMAN: There was a fair amount of hyperbole  
25 in that, Your Honor.



1 MS. SOIFER: Well, they have filed -- let me just  
2 say that in the Southern District of Texas, the number of  
3 pages that were filed in our motion for fees and their motion  
4 to transfer and the required responses and all of that, it is  
5 close to a hundred pages.

6 THE COURT: That's all together. Okay.

7 MS. SOIFER: All together.

8 THE COURT: But I do think it is --

9 MS. SOIFER: I don't know how much in Tennessee.

10 MS. BUSCHNER: May I add one other response? I  
11 have found the emails I was looking for. So the *Reuille* case  
12 was unsealed December 27th, 2010.

13 The *Cook-Reska* case was redacted and provided to  
14 Mitch Mitchelson, who was the preceding lawyer to Mr.  
15 Waldman. Maybe that's why he doesn't know about it. To  
16 Mitch Mitchelson, and he was given a copy of our complaint  
17 February 2nd, 2011.

18 And the U.S. Attorney's office in Houston met with  
19 Mr. Mitchelson and some of his colleagues on February 10th,  
20 2011. And so they have had our complaint since February 2nd,  
21 2011, the *Cook-Reska* complaint.

22 So while it is true that they were not formally  
23 served, all of these complaints were provided to them before  
24 they settled. The idea that they settled and then, surprise,  
25 they learned about all of these cases is not correct, and it

1 is certainly not correct with regard to *Reuille* and  
2 *Cook-Reska*. *Reuille* was unsealed, *Cook-Reska* was partially  
3 unsealed. Mr. Waldman did get a copy of the complaint  
4 February 2nd, 2011 so that the sequence is incorrect. They  
5 knew about these cases when they were negotiating them and  
6 when they reached the resolution. And in fact the settlement  
7 agreement required that we all dismiss our claims, which we  
8 agreed to, and they knew we weren't doing that for free.  
9 They knew we were all getting -- our clients were all getting  
10 relator shares.

11 And so this is not some new thing that was sprung  
12 upon them, so the idea that they should have -- I think the  
13 Court is exactly right. They had a choice. You either  
14 settle against just the Government and go fight the relators  
15 filing motions to dismiss, or you settle with everybody as  
16 they did, and then you don't get to have this fight. And  
17 that's part of what motivates us to say what should be teed  
18 up in front of Judge Sharp is our motion for entitlement to  
19 fees and our fees.

20 THE COURT: What are you going to say in your  
21 motion for entitlement to fees? You would say motion for  
22 entitlement to fees. We were prevailing party. There is no  
23 contest about that; is that right? Except as to the first to  
24 file?

25 MR. WALDMAN: Yes, we would argue they are not the

1 prevailing party because they are not the first to file.

2 THE COURT: Okay.

3 MS. SOIFER: *Reuille* was the first to file, not  
4 the first or second.

5 THE COURT: Okay. But we're the prevailing party.  
6 And we are not, and the first to file rule does not apply.

7 MS. SOIFER: Well, it is our contention that we  
8 were the first and second relators that filed. The first one  
9 filed first as to her hospital in Indiana. The second filed  
10 first as to her hospital in Texas and against CHS, the parent  
11 corporation. And we prevailed in both of those cases. And,  
12 therefore, we are entitled to our fees in both of those  
13 cases. But in addition, it is our contention that as a group  
14 of seven cases, we're prevailing. Of seven cases that were  
15 required to be dismissed and settled. And as a result of  
16 seven cases having worked together to get to joint resolution  
17 are entitled to fees.

18 THE COURT: Are you going to be filing you,  
19 everybody, all of the relators' counsel one thing, or are you  
20 going to be filing three things or four things?

21 MS. SOIFER: It would be our preference to file at  
22 the same time each of us file our own pleading.

23 THE COURT: Because you have something special to  
24 say about yours?

25 MS. SOIFER: There are some different issues in

1 each instance.

2 MR. WALDMAN: Your Honor, actually, I think all  
3 these arguments were made to Judge Sharp. And he said I am  
4 not going to consolidate them because there was important  
5 issues here. But let me just point out how I think her last  
6 comment that we need different briefs actually supports the  
7 idea that we should go first. I would propose that we file a  
8 initial brief of 40 days. They can each file 15- or 20-page  
9 briefs, and whatever they file we'll file reply. That will  
10 be half that amount. So they will actually in total get much  
11 more. They will get 60 pages in total. We'll only get 40  
12 pages in the initial briefing, and our briefing and reply  
13 will just be half of whatever.

14 THE COURT: Why do you need 40 pages? Why can't  
15 you file something that's just 20 pages?

16 MR. WALDMAN: Well, Your Honor, the False Claims  
17 Act has a lot of law. It is complicated, and we think if  
18 Your Honor wants to say 30 pages and they each get ten,  
19 that's fine also.

20 THE COURT: Well, here is my problem on this  
21 issue. Judge Sharp has a policy of limiting parties to 20  
22 pages. I don't know what he's done in previous briefing in  
23 this case.

24 MR. GARRISON: Your Honor, CHS has already filed a  
25 response to our entire fee petition that's 34 pages. This is

1     apparently a brief on one issue or two issues.

2             MR. WALDMAN: Well, to be fair, about half of that  
3     brief was on entitlement, and half of it was on the issues of  
4     how much fees -- the normal attorney's fees.

5             THE COURT: Right.

6             MR. WALDMAN: And we are now not responding to one  
7     party. We are responding or we're moving to dismiss four  
8     parties. So I think --

9             THE COURT: No, not moving to dismiss anybody.  
10    You that water has -- that bridge has been --

11            MR. GARRISON: The train has left the station.

12            THE COURT: I knew there was some analogy that was  
13    going to work. Thank you.

14            You are saying it is inappropriate for the Court  
15    to award attorney's fees in under the circumstances of this  
16    case, i.e., the applicability of the first to file rule and  
17    the public disclosure bar. That's what you are saying.

18            MR. WALDMAN: Correct, Your Honor. The Court  
19    doesn't have jurisdiction to do that in light of those two  
20    bars.

21            THE COURT: Yes, ma'am.

22            MS. SOIFER: A couple of other points I wanted to  
23    make that they allege that courts all over the country over  
24    our objection transferred this case here. Our objection in  
25    Houston was that it all ought to get heard at once. It

1 wasn't divisible. And the court decided to divide it.

2           The other court in Houston followed our case and  
3 said, well, if that one is going, we may as well send this  
4 one. We agreed to the transfer in *Reuille*. So the idea that  
5 there are multiple courts all over the country that have made  
6 this independent decision, that is not correct.

7           And then the objection to consolidation we asked  
8 that the Court coordinate these cases but not consolidate  
9 them so that we would each have our own separate appellate  
10 rights and procedural rights, and the Court at some point  
11 built that into his order. He calls it consolidation, but he  
12 did exactly what we asked.

13           So the idea that we somehow have lost and ended up  
14 in this consolidation is not correct either.

15           The bottom line here, Your Honor, is what they are  
16 asking for procedurally is that they have their cake and eat  
17 it too. They could settle with all of us and make us all  
18 drop our claims and make us all dismiss our cases. And now  
19 they are going to go first and file a motion they want to  
20 call a motion to dismiss, but it is essentially a motion to  
21 say, yeah, we settled with you. Yeah, we made you drop all  
22 of your claims. Now we're going to argue that you don't get  
23 your fees.

24           The proper procedural step to take right here is  
25 that we have to ask for our fees, and they need to tell the

1 Court why we shouldn't have them. And that is exactly what  
2 the Court has teed up for the magistrate to schedule is  
3 we say why we're entitled to our fees, which is how the  
4 rule sets it up after the cases are dismissed. And they  
5 say -- they respond. I think that's the appropriate  
6 procedural move at this point. And the idea that somehow  
7 they get their cake and eat it too, not having filed motions  
8 to dismiss, instead they settled with us and made us drop all  
9 of our claims and now they come in again and do what they  
10 could have done but chose not to do, is wrong.

11 MR. GARRISON: Just an additional point, Your  
12 Honor, is that the case settled in August. We filed our fee  
13 petitions. They haven't stated one reason why they haven't  
14 filed this motion to dismiss. I mean, that's what he calls  
15 it. I wouldn't call it. Whatever the motion is, they have  
16 never filed it. And there is no reason that they couldn't  
17 have filed it as soon as this case was intervened and  
18 settled.

19 THE COURT: I have a concern.

20 MR. WALDMAN: Your Honor, there are no fee  
21 petitions currently pending. If you'd like, we'll file it,  
22 and that will be the next filing will be our motion to  
23 dismiss if that will make Mr. Garrison happy.

24 MR. GARRISON: When we filed our fee petition and  
25 it was pending for six months, they didn't file that either.

1           THE COURT: Okay. It occurs to me that by  
2 consolidating, Judge Sharp may have -- and it may not be  
3 clear -- may have intended that the briefing be on a  
4 consolidated basis. Now, I understand that there is at  
5 least as to two of the cases some separate issues, but there  
6 is -- I just hate for there to be multiple relator filings.  
7 And I am just trying to figure out if there is any way to  
8 address that.

9           I also am really squeamish about this 20-page  
10 limitation that you said Mr. Garrison were over 34 pages  
11 that's been -- I don't know what to do about that. Yes, sir.

12           MR. KREINDLER: Your Honor, I understand you want  
13 to avoid multiple relator filings, which is part of the  
14 reason we didn't want to be here. All of these cases are  
15 different. They are in different postures. Mr. Garrison's  
16 case has a public disclosure issue that the other two cases  
17 have, Ms. Soifer's case has an actual settlement that was in  
18 my case and on Mr. Garrison and Buschner's case. So we're  
19 all kind of in a little bit different place. So to say now  
20 you are stuck with just one briefing really isn't completely  
21 fair to the parties. And we have got to drag where we didn't  
22 want to be in the first place, and I just don't know. We're  
23 here, but now limit us and say, okay, now you get to say as  
24 much as you want to say, and you get to talk about your case  
25 and you are stuck. We're going to make you do a three-legged



1 race together that seems to be unnecessary way to hamstring  
2 us in this process.

3 MS. SOIFER: And I would refer the Court to the  
4 language in Judge Sharp's order. These four cases are hereby  
5 consolidated for purposes of scheduling, resolving pending  
6 motions and discovery disputes, and coordinating hearings  
7 related to the first to file determination regarding  
8 entitlement to attorney's fees and costs.

9 He doesn't suggest that consolidated briefing, and  
10 he could have said that if that was what he meant.  
11 Coordinated hearing suggests otherwise. It suggests that  
12 there would be more or less separate arguments made by each  
13 of the parties, and that's the real question.

14 MR. WALDMAN: Your Honor, I don't think your order  
15 needs to contemplate a number of pages. Both sides have  
16 asked for extension of pages multiple times in this case, and  
17 Judge Sharp has granted that request. So maybe your order  
18 doesn't need to address that, and maybe it is our problem.

19 THE COURT: I agree with that.

20 MS. SOIFER: And not only that. If we each file  
21 our own motions, they get 20 pages to respond to each of the  
22 motions, so I don't understand what their concern is. They  
23 don't have to file one consolidated response and give us  
24 three-quarters of their pages. They could file a separate  
25 response to each of our motions.

1           THE COURT: Well, I think it is -- did you want to  
2 say something more?

3           MR. WALDMAN: No, just the idea of filing separate  
4 responses seems a little unwieldy for Judge Sharp. I would  
5 think he would have wanted to have a consolidated opening  
6 brief from us, different smaller briefs from the defendants  
7 from the plaintiffs, and then a reply brief half the amount  
8 of whatever they file in their opposition.

9           THE COURT: Well, I will grant you this is an odd  
10 way of proceeding particularly because the motion for  
11 attorney's fees has been denied at this point to be refiled  
12 once the threshold issue gets resolved. And I think  
13 procedurally what probably makes sense, although it is not  
14 absolutely clearcut, but I think it probably makes sense to  
15 let the relators go first. Let the defendants then and let  
16 the relators file their separate briefs as much as I don't  
17 like it and I wish it was a different situation, I think you  
18 have made a good enough point that at least some of your  
19 issues are separate unto yourselves, and you can't mush them  
20 all together in one brief because you do have separate  
21 issues.

22           And then let the defendant if you choose to,  
23 you can certainly choose to respond in one brief, or you  
24 can -- one memoranda, or you can respond in four different  
25 memoranda should you want to.

1           I would suggest that anybody that wants more than  
2 20 pages get permission -- and you can go ahead and do that  
3 now -- from Judge Sharp. You may not need that. You may  
4 just say you just want to file one brief in response to the  
5 relators' memoranda. So you want 40 pages and that's  
6 essentially the same as if you had filed ten pages per  
7 motion.

8           And then the time frame, I don't think anybody has  
9 a problem with the time frame. Do you have a problem with  
10 the time frame?

11           MR. WALDMAN: No, Your Honor. But if they are  
12 going to be allowed a reply brief due to the unusual  
13 circumstances here that you recognize, we would ask for a sur  
14 reply, a time for a sur reply brief, you know, a week  
15 additional to file a sur reply. This is, as you said, it is  
16 a very unusual circumstances. I think it is very odd that  
17 they get to go first on something which is really a motion to  
18 dismiss their petition. But assuming that's how Your Honor  
19 wants to go forward, we ask that we be allowed to sur reply.

20           THE COURT: I am not surprised that you asked for  
21 that. And I think that may be reasonable. It may be  
22 unnecessary, but I am going to allow you to do that. That  
23 can be very short.

24           Now what did we say about -- that still fits into  
25 the potential time frame of a hearing before Judge Sharp on

1 June 22nd potentially.

2 Now, when we talked about that date, did anybody  
3 have any irreconcilable conflicts?

4 MS. SOIFER: No, Your Honor.

5 THE COURT: Okay.

6 MR. WALDMAN: The 22nd.

7 THE COURT: Yes, but that's not etched in stone.  
8 That's to pencil in in a very light lead.

9 MR. YOUNG: I have a trial on the 20th of July in  
10 Memphis, but my presence is not necessarily mandatory.

11 THE COURT: This is June.

12 MR. YOUNG: Oh, alternatively you mentioned July  
13 20.

14 THE COURT: I did.

15 MR. YOUNG: And I mean I have a trial. It is not  
16 good for me, but if that's better for everybody else, you go  
17 ahead.

18 THE COURT: Okay. Well then the second question  
19 is look at July 20th in the morning.

20 MR. YOUNG: If it is good for everybody else, then  
21 that's fine. I just won't be there.

22 THE COURT: Y'all are so accommodating on your  
23 schedules. Nobody has anything else on your schedule for the  
24 summer? All right.

25 MR. WALDMAN: This is a top priority, Your Honor.

1           MR. O'CONNELL: We are liable to be out of the  
2 country middle of July but should be back by July 20.

3           THE COURT: Now, can you tell me -- and this is  
4 going to be the most difficult part of it -- what conflicts  
5 just as you had mentioned, did any of you all have that you  
6 can't rearrange your schedule to have a hearing in front of  
7 Judge Sharp? You just told me you are out of the country.

8           MR. O'CONNELL: Your Honor, we don't know yet, but  
9 it is that trip that we normally go on is usually July 18th.

10          MS. SOIFER: 4th through the 16th.

11          MR. O'CONNELL: It is not finalized yet.

12          THE COURT: July 4th through the 16th. You just  
13 tell me what dates to avoid.

14          MR. O'CONNELL: I think Ms. Soifer is right, 4th  
15 through the 16th. Usually those two weeks that we likely  
16 would be.

17          MS. SOIFER: Fourth through the 18th. That's a  
18 Saturday through Saturday.

19          THE COURT: Okay. I was going to ask you could  
20 you come on the 17th, and you are telling me no.

21          Anybody else have conflicts you can't move?

22          MS. SOIFER: June 5th we're supposed to be in a  
23 wedding in Lexington that afternoon. You said late  
24 afternoon. How long it takes to get there, Lexington, so  
25 that's the only other date that I see.

1 THE COURT: June 5th.

2 MR. KREINDLER: Your Honor, my kids are off  
3 whatever the 7th of that week, and I would prefer --

4 THE COURT: Of which?

5 MR. KREINDLER: Of June. I don't have my calendar  
6 in front of me, but I prefer not to be the second week in  
7 June.

8 THE COURT: That would be, yeah, the Sunday -- the  
9 7th is Sunday, so not the week of June 8.

10 MR. KREINDLER: Yes, please, Your Honor.

11 THE COURT: Anybody else?

12 ATTORNEY: Your Honor, I have teenagers, and they  
13 have no interest in hanging out with me.

14 THE COURT: It is interesting to see lawyers from  
15 when they first came in and they had preschool children, and  
16 then they had they are all concerned about school breaks.  
17 And then there was this period of time during high school  
18 where there was no concern whatsoever. And then you had the  
19 going to college and the coming home from college issues.  
20 Yes. It will be too soon when your children will be in the  
21 same situation and not care.

22 Any other conflicts? All right. I will get with  
23 Judge Sharp's office and see what -- I will get with Judge  
24 Sharp and see what he is willing to do and enter an order to  
25 that effect.

1           What else can we talk about today? Anything else  
2 we need to hone in on?

3           MR. GARRISON: One issue we'd like to raise again.  
4 We've asked the Court to order this. We know that CHS has  
5 scheduled these claims in two other cases. These type of  
6 claims get resolved all the time. Your Honor is an excellent  
7 mediator, and we think that all sides could benefit from a  
8 mediation. We don't think that should slow down this  
9 process, but we think that it insights from a mediator like  
10 you for CHS and for the relators, we might all benefit from  
11 it, and we could avoid litigating piecemeal a fee petition  
12 that was contemplated under settlement. We would request  
13 that that be ordered.

14           CHS has said it opposes it, but CHS didn't oppose  
15 settling with the third and the sixth case. We think all  
16 these cases have room for compromise, and so we would renew  
17 the court-ordered mediation of the parties but that that  
18 mediation not slow down this briefing schedule.

19           THE COURT: Except for one case that I have, which  
20 is the Cloverbottom case which is a monthly settlement  
21 conference session for me, I am not doing any more settlement  
22 conferences. Just sort of FYI.

23           I did understand from Judge Sharp's order that you  
24 all at this point were not interested in any kind of  
25 mediation or settlement conferences. Is that correct?

1           MR. WALDMAN: That's correct, Your Honor. We  
2 believe after this decision on entitlement is decided upon,  
3 at that point we think mediation may be very fruitful. But  
4 at this point with four different relators seeking millions  
5 of dollars on a first to file rule, we don't think that will  
6 be helpful.

7           MR. KREINDLER: Your Honor, I certainly don't want  
8 to disagree with my co-counsel relator. We were ordered to  
9 mediation. It was a waste of time. We agree with defendant  
10 it was a waste of time.

11          THE COURT: At this stage it is?

12          MR. KREINDLER: Yes, it may be a waste of time.

13          THE COURT: Ever? You said you can raise it again  
14 once there has been a ruling on the what we're calling the  
15 first to file, but I think it is a little bit more expansive  
16 than that. We are talking about first to file and the public  
17 disclosure bar. That's what we're talking about.

18          MR. KREINDLER: Correct, Your Honor.

19          THE COURT: So it seems to me that in the  
20 plaintiffs' filings y'all don't need to spend a lot -- I am  
21 sorry, in the relators' filings, you don't need to spend a  
22 lot of time hashing ground that there is no dispute on or  
23 responding to it.

24          MR. GARRISON: Your Honor understand that the  
25 relators, the settlement itself creates the payment to the



1 relators, all of them regardless of which relator. So we're  
2 going to be not only limited to just first to file public  
3 disclosure, but our argument is going to be we all get paid.  
4 And then in alternative because see this is where the  
5 defendant wants us to be fighting with each other. I want to  
6 make sure that I heard you say that you aren't limiting us,  
7 allowing them to structure our pleading, and that's not going  
8 to be -- that is going to be an argument, separate argument  
9 which --

10 THE COURT: I thought you were going to argue all  
11 of you were going to argue at least in the alternative that  
12 the first file rule is inapplicable. Is that what you are  
13 saying?

14 MR. GARRISON: Yes.

15 THE COURT: Clearly I expect that.

16 MR. GARRISON: Okay. I was a little worried. I  
17 thought I heard you say, so I wanted to make sure that was  
18 correct.

19 THE COURT: I am just saying like that issues that  
20 you would normally, and I am sure did, raise in your -- there  
21 are issues that you would raise in a fee app you don't  
22 necessarily need to spend a lot of time on if they are not  
23 contested or challenged. And we all know that this is the  
24 threshold issue. That's the issues.

25 MR. GARRISON: Your Honor, when you talk to Judge

1 Sharp, we have been working on this case for six years.

2 Obviously, we want closure on that.

3 THE COURT: Is it problem that the relator is  
4 known?

5 MR. GARRISON: In some --

6 THE COURT: Is it?

7 MR. GARRISON: Some of them at the request of the  
8 Government, they have been found out. But our concern is  
9 that this case got handshake deal last May. I just ask that  
10 you let Judge Sharp know we want to move this thing as  
11 promptly as possible.

12 MR. WALDMAN: Your Honor, page five of Docket  
13 Entry 115, Mr. Class has received a relator share of  
14 \$16,427,740.96 plus interest. And for the Laredo Medical  
15 Center claims, Ms. Cook-Reska received a relator share of  
16 \$2,141,984.

17 MR. WALDMAN: Your Honor, Ms. Cook-Reska was paid  
18 12 percent of the \$9 million of nonED claim settlement, and  
19 she was paid 19 percent of about \$2 million that was the  
20 Government determined that she is eligible to receive under  
21 the ED claim version. So, yes, those are public. What is  
22 not public is the relators agreed to share.

23 The Government --

24 MS. SOIFER: The Government required us, and the  
25 defendants waited a time, an agreement among all seven cases

1 on how the money would be shared because the defendants  
2 wanted us all to dismiss our claims. Knew we weren't going  
3 to dismiss our claims if we didn't all get paid. The  
4 Government knew that as well. There could have been a fight  
5 on first to file among us and with the defendants if we  
6 hadn't worked this out, and so at the Government's insistence  
7 we did. We had a mediation. We worked it out. And that  
8 redistribution of those amounts is not public, and there is a  
9 confidentiality provision on that.

10 Suffice it to say that Mr. Plank should not get  
11 the entire \$16 million, nor did Ms. Cook-Reska get all of  
12 that \$2 million. It all got redistributed, which was  
13 defendants and the Government's intention in that we must  
14 work it out amongst ourselves so that we would all get paid.  
15 Who the government paid and which of the defendants paid the  
16 Government is really not an issue.

17 THE COURT: Okay. Anything else?

18 Despite what you just said though it may be  
19 appropriate to raise the issue of ADR after the resolution of  
20 this motion.

21 I certainly will relay your concerns about the  
22 amount of time that has expired and how anxious you are all  
23 to get a resolution, i.e., at this point what we're talking  
24 about is a hearing as soon as possible.

25 All right. Anything else? Thank you.

## 1 REPORTER'S CERTIFICATE

2  
3 I, Cathy B. Leigh, Official Court Reporter for the  
4 United States District Court for the Middle District of  
5 Tennessee, with offices at Nashville, do hereby certify:

6 That proceedings were held in open court on April  
7 7, 2015, in the matter of UNITED STATES OF AMERICA vs.  
8 COMMUNITY HEALTH SYSTEMS, INC., Case No. 3:11-cv-442; that  
9 the audio recording of said proceedings in connection with  
10 the hearing was reduced to typewritten form by me; and that  
11 the foregoing transcript (pages 1 through 67) is a true and  
12 accurate record of said proceedings to the best of my  
13 ability.

14 This the 9th day of April, 2012.

15  
16 /s/ Cathy B. Leigh  
17 Cathy B. Leigh, RDR, CRR  
18 Official Court Reporter  
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